

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ISIDORO FLORES TEXIDOR, JR.,	:	
Petitioner	:	
	:	
	:	
v.	:	CIVIL NO. 1:10-CV-1884
	:	
	:	
LOUIS S. FOLINO, <i>et al.</i> ,	:	
Respondents	:	

*O R D E R*

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

We are considering Petitioner's objections to the Report and Recommendation ("R&R") of Magistrate Judge Carlson, which recommends that we deny his petition for habeas relief.

Petitioner's argument, as expressed in his well written brief, is that, with the exception of one victim, the evidence at his state trial was insufficient to convict him of aggravated assault, and aggravated assault with a deadly weapon, and rose no higher than simple assault.

We need not repeat the evidence of what occurred at the time of the offense, as that narrative is set forth in detail in the R&R (Doc. 26, pages 2-5), as well as in the opinion of the Superior Court of Pennsylvania, filed July 30, 2007 (Doc. 24). Petitioner contends that the evidence at his trial was insufficient to convict him for aggravated assault as to victims Gearhart, Winkler, and Pribish.

Petitioner appealed his conviction to the Pennsylvania Superior Court, raising the same claims of error as those presented here. The Pennsylvania Supreme Court denied his petition for allowance of appeal.

The Superior Court, and Judge Carlson, concluded that the evidence at trial was sufficient to maintain the convictions. We have carefully reviewed and studied the rationale expressed by the Pennsylvania Superior Court (Doc. 24) and by Judge Carlson (Doc. 26) in their detailed analysis of the law as applied to the facts in this case. We concur completely with the reasoning and conclusions of the two courts, and cannot accept Petitioner's argument that he is entitled to relief because the evidence did not prove that he intended to inflict serious bodily injury on his victims. As noted, this intent can be proved by circumstantial evidence, and the totality of what took place when the crimes were committed was more than sufficient to show intent. Had the victims not cooperated with the home invaders in the way they did, it is highly likely that serious bodily injury would have followed.

Accordingly, this 2nd day of August, 2011, upon consideration of the report (doc. 26) of the magistrate judge, and Petitioner's objections (doc. 27) thereto, it is ordered that:

1. The Report of Judge Carlson is adopted.
2. Pursuant to his recommendation, the petition for habeas relief under 28 U.S.C. § 2254 is denied.
3. Based on the Report, a certificate of appealability is denied.<sup>1</sup>

---

<sup>1</sup> However, Petitioner is advised that he has the right for thirty (30) days to appeal this order denying his 2254 petition, see 28 U.S.C. § 2253(a); Fed. R. App. P. 4(a)(1)(A), and that our denial of a certificate of appealability does not prevent him from doing so, as long as

4. The Clerk shall close this file.

/s/ William W. Caldwell  
William W. Caldwell  
United States District Judge

---

he also seeks a certificate of appealability from the court of appeals. See Federal Rule of Appellate Procedure 22; Local Rule of Appellate Procedure 22.1.